IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6174 of 1997
with
SPECIAL CIVIL APPLICATION Nos 5088, 6707, 6710, 6712
6714 to 6719 of 1998
and
SPECIAL CIVIL APPLICATION No 6369 of 2003

(12 matters)

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MOHAMMED HUSAIN MUSA VANA

Appearance:

1. Special Civil Application No. 6174 of 1997
MR AY KOGJE AGP for Petitioner No. 1-2
MR RD DAVE for Respondent No. 1
RULE SERVED for Respondent No. 2

2. Special Civil Application No. 6707, 6710, 6712, 6714 to 6718 of 1998
MR AY KOGJE AGP for Petitioner No. 1-2
MR PANKAJ R DESAI for Respondent No. 1
RULE SERVED for Respondent No.2

3. Special Civil Application No. 5088 of 1998
MR AY KOGJE AGP for Petitioner No. 1

MR PANKAJ R DESAI for Respondent No. 1-10

4. Special Civil Application No. 6369 of 2003

MR PANKAJ R DESAI for Petitioner No. 1-10

MR AY KOGJE AGP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 22/12/2004

COMMON ORAL JUDGEMENT

1. These petitions seek to challenge the same common award and order of the Labour Court, Junagadh by which, in a group of Reference cases, the petitioner was directed to reinstate the workmen concerned with continuity of service and other benefits with 35% backwages and cost of Rs.1000/-. The impugned award is dated 2.2.1996 and the first of these petitions appear to have been admitted on 26.8.1997 when interim relief staying the backwages appears also to have been granted. According to the order obtained as late as on 22.4.2003 in Civil Application No.2780 of 2003 in Special Civil Application No.6174 of 1997, after six years of the order for reinstatement, a positive direction to reinstate the workman concerned was obtained and pursuant to that order, the respondents are stated to have been reinstated at present. On the other hand, the recovery application for recovering the amount of backwages appears to have been filed by the respondents in the Labour Court, Junagadh and even after the interim relief staying the backwages having been granted by this Court, that recovery application appears to have been allowed on 24.10.1997. That order is under challenge in Special Civil Application No.5088 of 1998 which was also heard and is disposed by this judgment by joint request of the learned counsel.

2. The respondent-workmen had raised industrial disputes upon termination of their services and had led evidence in support of their contention that they had completed 240 days of service in the year preceding the date of their termination. The case of the petitioner before the Labour Court was that there was no work and no grant to continue the respondents in service and that in any case, they were temporary daily wage labourers. The Labour Court has, after appreciation of evidence on record, arrived at the finding that the respondents were working since more than 7 years and upon raising a demand for making them permanent, they were ceased to be

provided with work. Their services were thus terminated without payment of any legal dues and without any legal procedure being followed. However, in view of the long lapse of time, since the date of termination i.e. 2.2.1986, the award of backwages was reduced to 35%.

3. The learned AGP vehemently argued that the respondents were employed on a Nursery with a view to help the labourers and not on any commercial or industrial enterprise of the petitioner. He further submitted that there was no permanent set-up of workman and labourers, and therefore, respondents come to work on their own wish and were paid Rs.15 per day as a relief to them. It was also sought to be argued that the establishment of the petitioner was not an industry as defined in the Industrial Disputes Act, 1947 and that, in absence of any posts, work or fund, the respondents ought not to have been ordered to be reinstated.

4. The petitioner has not cared to annex with the petition any part of the evidence or the pleadings of the parties to even prima-facie show that the pleas taken by the petitioner were not dealt with or that any findings of fact arrived at by the Labour Court were perverse. Therefore, factual controversies could not have been raised for the first time in the petition under Article 227 of the Constitution. There is, otherwise, no reason to disturb the findings of fact and since admittedly, the petitioners have not complied with the provisions of Section 25F of the Industrial Disputes Act, 1947, and the workmen are already reinstated, the impugned award and order does not call for interference by this Court as far as reinstatement is concerned.

5. As regards the award of backwages and the order to recover the same in Recovery Application No.156 of 1996, it was fairly conceded by the learned counsel for the workmen concerned that, in absence of any evidence regarding unemployment or alternative employment during the period from 2.2.1986 to 2.2.1996 and for 7 years even thereafter as also in view of the nature of employment of the respondents on daily wage basis the order to pay backwages may not have any basis and may not be justified. No discussion in this regard is found in the impugned award. The learned AGP appearing for the petitioners submitted that the respondent-workmen were not interested in the job which was apparent from the fact that even after the qualified stay against payment of backwages only they did not report for duty and made an application for a direction to reinstate them after 7 years of the award. He also submitted that at the time

the petitioner was required to reinstate them under the order of this Court in the year 2003, there was no work for them but their services could not be terminated in accordance with law because of the pendency of these proceedings.

6. In the above facts and circumstances, the discretionary order granting backwages under the impugned award appears to be perverse, unsustainable and unjustified.

7. Accordingly, the petitions challenging the impugned award are partly allowed and the order regarding payment of 35% backwages and costs is set aside. Special Civil Application No.5088 of 1998 challenging the order dated 24.10.1997 of the Labour Court, Junagadh in Recovery Application No.156 of 1996 for recovery of the backwages then due is allowed and the impugned order is set aside. Rule in each of the petition is made absolute accordingly with no order as to costs. Special Civil Application No.6369 of 2003 filed by the workmen concerned to challenge the same award with a prayer to grant 100% backwages does not survive and it is dismissed and rule therein is discharged with no order as to costs.

(D.H. WAGHELA,J.)
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